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September 10, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Room TW-A325
Washington, D.C. 20554

Re: Petition of the Wireless Consumers Alliance, Inc. for a Declaratory Ruling on Communications Act Provisions and FCC Jurisdiction Regarding Preemption of State Courts From Awarding Monetary Damages Against Commercial Mobile Radio Service Providers For Violation of Consumer Protection Or Other State Laws, DA 99-1458, WT 99-263

Dear Ms. Salas:

Enclosed for filing please find an original and four copies of the Comments of Sprint PCS in the above-captioned matter, and a stamp-and-return copy.

Thank you for your assistance. Please call if there are any questions.

Sincerely,

Robert D. Wick

Robert D. Wick

Enclosure

cc: Susan Kimmel, Policy Division (two copies)
ITS
Roger Sherman, Esq.
Steven Sletten, Esq.
Kenneth Hardman, Esq.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Petition of the Wireless Consumers Alliance, Inc. for a Declaratory Ruling on Communications Act provisions and FCC jurisdiction regarding preemption of state courts from awarding monetary damages against CMRS providers for violation of consumer protection or other state laws.	)	DA 99-1458

TO: The Commission

COMMENTS OF SPRINT PCS

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September 10, 1999

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SUMMARY

Petitioner the Wireless Consumers Alliance seeks a declaratory ruling from the Commission in connection with *Spielholz, et al.* v. *AT&T Wireless Services, Inc.*, a class action lawsuit filed in California against AT&T Wireless and its predecessor, LA Cellular Telephone Company. The *Spielholz* complaint alleges that the wireless telephone service provided by LA Cellular fell short of the service that was promised to consumers, and seeks money damages as a result of this allegedly inadequate service. The trial court dismissed these damages claims on the ground that they "would require the state court to regulate or adjust rates" of a Commercial Mobile Radio Service ("CMRS") provider in contravention of section 332(c)(3)(A) of the Communications Act of 1934. In connection with its mandamus appeal of the trial court order, Petitioner asks the Commission to issue a declaratory ruling that the Act does not pre-empt state courts:

> from awarding monetary relief against [CMRS] providers for (a) violating state consumer protection laws prohibiting, *inter alia*, false advertising and other fraudulent business practices, and/or (b) wrongful conduct in the context of contractual disputes and tort actions adjudicated under state contract and tort laws. (Petition at 1.)

Sprint Spectrum L.P., d/b/a Sprint PCS, submits these Comments in opposition to the Petition. The Commission should decline Petitioner's invitation to issue a sweeping ruling that any money damages claim couched as a claim of "consumer protection" or "wrongful conduct" under the laws of any of the fifty states is permissible under the Communications Act. The Petition does not provide an adequate basis or an adequate record for addressing such an open-ended and ill-defined question. The Commission should instead restrict the scope of its declaratory ruling to the types of state

court claims discussed in the Petition: money damages claims based on allegations of inadequate cellular service.

The Commission should declare that such money damages claims are pre-empted by section 332(c) of the Act. Claims based on allegations of inadequate wireless service necessarily draw state courts into the business of regulating the rates charged by carriers. In order to award damages on such claims, state courts must determine a reasonable rate for the partial service received by consumers and refund to consumers the difference between this reasonable rate and the rate collected by the carrier. Section 332(c) clearly forbids this form of state court regulation of wireless rates.

This does not mean that consumers are without a money damages remedy against wireless carriers that provide inadequate service; it simply means that their remedy lies in the federal courts or the Commission rather than the state courts. The Communications Act permits consumers to sue for damages in federal court or the Commission based on "unjust" or "unreasonable" carrier practices. The federal courts and the Commission can clearly be relied upon to protect consumers under these provisions. While class action lawyers might prefer to have a choice between the state courts *or* the federal courts, *consumers* are not injured by section 332(c)'s pre-emption of damages claims based on allegations of inadequate wireless service.

COMMENTS

I. Money Damages Claims Based on Allegations of Inadequate Service Require State Courts To Engage in Prohibited Rate Regulation.

The Communications Act, as amended in 1993, provides: "no State or local government shall have any authority to regulate the entry of or the rates charged by any [wireless telephone service provider]." 47 U.S.C. § 332(c)(3)(A). The plain meaning of this provision is that all forms of state regulation of wireless rates are prohibited, whether by state utility commissions, state legislatures, or state courts.

State court damages awards based on allegations that a carrier did not provide as much wireless service as it promised to consumers would violate section 332(c)'s prohibition on state rate regulation. In awarding damages on such claims, state courts would have to determine an appropriate rate for the level of service that was provided, and award consumers the difference between this court-determined rate and the rate charged by the carrier. The resulting damages award, though not on its face a rate determination, would nonetheless determine the rate that the carrier could keep for the service it provided. These damages awards would thus "enmesh the [state] court[s] in the rate setting process" in a manner that is prohibited by section 332(c). *Day* v. *AT&T Corp.*, 74 Cal. Rptr.2d 55, 65 (Cal. App. 1998) (dismissing money damages claims based on rounding up of long distance charges because such claims would require the court to engage in rate review, in violation of the filed rate doctrine).

It makes no difference to this analysis whether a claim is overtly framed as one for inadequate service or is instead framed as a claim that the carrier misrepresented the extent or quality of its service. In either case, the root of the claim is that the wireless

service received by consumers was inferior to the service promised by the carrier. A damages claim for misrepresented wireless service would thus entangle a court in rate regulation just as much as would a straightforward claim of inadequate service. In awarding damages on such a misrepresentation claim, a court "would still have to compute the measure of the plaintiff's damages" as the "difference" between the rate collected by the carrier "and the rate that would have been deemed reasonable absent the fraudulent acts." *Porr* v. *Nynex Corp.*, 660 N.Y.S.2d 440, 447 (A.D. 2 Dept. 1997) (dismissing claims of fraudulent concealment of rounding up of long distance charges as pre-empted by filed rate doctrine); *see also Wegoland Ltd.* v. *Nynex Corp.*, 27 F.3d 17, 21 (2d Cir. 1994) ("only by determining what would be a reasonable rate absent the fraud could a court determine the extent of the damages"). Under section 332(c), state courts cannot engage in this form of retrospective regulation of the rates of wireless providers.

The manner in which damages awards can regulate wireless rates is particularly evident in the class action from which this Petition arises. There, the *Spielholz* class seeks money damages under statutes that authorize the California courts to "restore" to consumers any "money or property" acquired through unfair trade practices or deceptive advertising. Cal. Bus. & Professions Code §§ 17203, 17535.[1] These statutes only empower the state courts to "restore" or "rebate" portions of the payments made by consumers. *See Day*, 74 Cal. Rptr.2d at 64. Furthermore, the *Spielholz* class is not seeking this restitutionary relief on a plaintiff-by-plaintiff basis; it seeks restitution on a *class-wide* basis with respect

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[1] Plaintiffs assert claims under, inter alia, "§17200, et seq." and "§ 17500, et seq." of the California Business and Professions Code. (Petition at 9 n.10.) Sections 17203 and 17535 are the relevant provisions authorizing private damages recoveries.

to wireless rates going back *several years*.[2] The only way a state court can award such relief on a class-wide basis is to do exactly what section 332(c) prohibits: determine in retrospect the rate that a carrier was entitled to charge a broad class of consumers, and refund the difference between this judicially-prescribed rate and the rate set by the carrier. The trial court in *Spielholz* dismissed the plaintiffs' damages claims under section 332(c) for precisely that reason.[3]

Petitioner responds that section 332(c) applies only to traditional, rate-of-return ratemaking, and not to damages awards or other actions that do not result in the formal declaration of a lawful rate for wireless service. (Petition at 12, 13, 19 n.40.) This argument overlooks the text of section 332(c). That section does not merely prohibit state action that formally "sets" or "establishes" wireless rates; it prohibits any state action that "regulate[s]" those rates. This language extends to money damages awards that serve to limit wireless rates as well to traditional, rate-of-return ratemaking. As the Supreme Court has observed, "regulation can be as effectively exerted through an award of damages" as through other forms of state action. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 247 (1959); *see also BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 572 n. 17 (1996) ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute"). While damages awards generally regulate rates

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2 *See* Appendix to Petition, Exhibit 1 at pp. 1-2.

3 *See* Appendix to Petition, Exhibit 4. Contrary to Petitioners' suggestion, the California Court of Appeal has not intimated its views on the merits of the trial court's order. The appeals court's "alternative writ of mandate" is merely a form of "SHOW CAUSE" order that sets the mandamus petition for briefing and argument. Appendix to Petition, Exhibit 7.

retrospectively and not prospectively, section 332(c) draws no distinction between retrospective and prospective state rate regulation.

Petitioner also argues that the "filed rate doctrine" does not apply to wireless providers, but that is not contested. Obviously, the preemption of state court damages claims against wireless providers turns not on the filed rate doctrine but on the meaning of section 332(c). This does not mean, however, that filed rate cases cannot shed light on the preemption issue raised by the Petition. Cases decided in the filed rate context help illuminate the scope of section 332(c) by explaining how damages awards can limit the rates charged by carriers. *See, e.g., Day*, 74 Cal. Rptr.2d at 64-65; *Porr*, 660 N.Y.S.2d at 447. These cases help make clear why section 332(c) itself – not the filed rate doctrine – preempts money damages awards based on claims of inadequate service: such awards would determine the rates that carriers could keep for service alleged to be inadequate.[4]

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[4] Congress was well aware of the century-old filed rate doctrine when it proscribed rate regulation in section 332(c) and its predecessor. *See generally Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 184-85 (1988) ("We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts."); *McNary* v. *Haitian Refugee Center*, 498 U.S. 479, 496 (1991) (presuming that "Congress legislates with knowledge of our basic rules of statutory construction"). Filed rate decisions therefore would have informed Congress' understanding of what courts would interpret as rate regulation under section 332(c). Moreover, when the pre-emptive clause in section 332(c) was originally adopted in 1982 (*see* P.L. 97-259, 96 Stat. 1087, 1097), CMRS providers were still required to file tariffs. CMRS providers are currently exempt from tariff requirements only because Congress gave the FCC the discretionary power to exempt them from certain common carrier requirements in 1993, and the FCC subsequently exercised that discretion. *See CMRS Second Report and Order*, 9 FCC Rcd. 1411, 1478-81 (1994).

II. The Declaration Sought By Petitioner Would Undercut the Goals of Section 332(c).

The purpose as well as the text of section 332(c) supports the conclusion that this section pre-empts money damages claims based on allegations of inadequate service. Section 332(c) was part of a related group of amendments pertaining to wireless service made by the Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993").[5] The OBRA 1993 amendments expressed a Congressional preference "for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear-cut need." *In the Matter of Petition of California P.U.C. to Retain Regulatory Authority over Instrastate Cellular Service Rates*, 10 FCC Rec. 7486, 7496-97 ¶20 (May 19, 1995). Congress thus intended to create a "stable, predictable regulatory environment" that would facilitate robust investment in wireless service. *Id.* Moreover, because Congress wanted to promote the growth of wireless service on a national basis, OBRA 1993 established "a *national* regulatory policy for CMRS, not a policy that is balkanized state-by-state." *Id.* at 7499 ¶ 24 (emphasis in original).

Granting the instant Petition would severely undercut these statutory purposes. Petitioner seeks a declaration that any damages claim that can be couched as a claim for "consumer protection" under the laws of any of the fifty states is permissible under section 332(c). (Petition at 28.) Under that interpretation of section 332(c), state courts could force wireless providers to make sharp retroactive rate cuts so long as the cuts were accomplished through damages awards entered in class action lawsuits. The fact that these

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[5] *See* P.L. No. 103-66, Title VI, § 6002.

class actions would have to be filed under consumer protection statutes would scarcely limit the potential for judicial regulation of wireless rates. Experience has shown that a wide variety of frontal attacks on the "entry of or the rates charged by"[6] CMRS providers can and will be artfully pleaded as consumer protection claims for inadequate service, deceptive advertising of the quality of the service, or price-gouging.[7]

Unless pre-empted by section 332(c), such claims would promote precisely the type of balkanized, state-by-state regulation of wireless providers that Congress intended to avoid. Wireless rates would be subject to revision by state court juries across the country under the consumer protection statutes of all fifty states. The "stable, predictable regulatory environment" that Congress intended to create for wireless providers would thus be disrupted, and the "national" regulatory scheme that it sought to establish would be thwarted.[8] The Commission should accordingly deny the declaratory ruling sought by Petitioner. The Commission should instead declare – consistent with the text and purpose of

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6 47 U.S.C. § 332(c)(3)(A).

7 *See, e.g., In re Comcast Cellular Telecommunications Litigation*, 949 F. Supp. 1193, 1201 (E.D. Pa. 1996) (noting that plaintiffs' breach of contract and restitution claims asked "that the court regulate the manner in which Comcast calculates its rate schedules," and finding these claims pre-empted); *Bastien* v. *AT&T Wireless Svcs., Inc.*, 1999 WL 259939, *5 (N.D. Ill. April 21, 1999) (holding that section 332(c) pre-empted consumer fraud claims that would have accomplished de facto regulation of CMRS provider's right of "entry" to market); *see also Porr*, 660 N.Y.S.2d at 447 (observing that, if not pre-empted, state court consumer fraud claims would expose common carriers to "the costs of potentially endless litigation brought by 'eager lawyers, using the class action vehicle [to] circumvent the state['s] rate-making mechanisms" through the state courts); *AT&T* v. *Central Office Telephone, Inc.*, 118 S. Ct. 1956, 1963 (1998) ("Rates. . . do not exist in isolation. They have meaning only when one knows the services to which they are attached. *Any claim for excessive rates can be couched as a claim for inadequate services and vice versa.*")

8 *In the Matter of Petition of California P.U.C.*, 10 FCC Rec. at 7496-97, 7499.

the Act – that section 332(c) preempts money damages claims based on allegations of inadequate or misrepresented wireless service.

This plain language reading of section 332(c) does not leave consumers without a damages remedy for claims of inadequate wireless service; it merely means that consumers have a federal remedy rather than a state court remedy. Section 201(b) of the Communications Act prohibits carriers from engaging in "practices" or imposing "charges" that are "unjust or unreasonable" to consumers. 47 U.S. § 201(b). Consumers injured by such practices or charges may sue for money damages in the federal courts or in the Commission. 47 U.S.C. §§ 206-209. Claims of deficient service or deceptive advertising on the part of wireless providers can be brought to federal court or the Commission under these prohibitions on unjust carrier practices. Petitioner suggests that it would be preferable to allow consumers to choose a state *or* a federal forum for their money damages claims, but that is not the judgment that Congress made in adopting section 332(c).

The federal courts and the Commission can clearly be relied upon to protect consumers from unjust or unreasonable carrier practices. *See generally CMRS Second Report and Order*, 9 FCC Rec. at 1482 ¶ 186 (rejecting petition for forbearance from sections 206 and 207 of the Act and noting that these provisions protect consumers from unjust or unreasonable practices by providers). The federal courts and the Commission, however, can also be depended upon to protect the national regulatory goals embodied in the 1993 amendments to the Communications Act. The federal courts and the Commission offer a superior forum for damages claims like those asserted in the *Spielholz* class action because, as the Seventh Circuit observed in a related context, "class actions of thousands or perhaps even millions of telephone subscribers, litigated in state court under state law, could

disrupt the federal regulatory scheme." *Cahnmann* v. *Sprint Corp.*, 133 F.3d 484, 491 (7th Cir. 1998).

III. Petitioner's Money Damages Claims Are Not Saved By The "Other Terms and Conditions" Clause of Section 332(c) or the Generic Savings Clause of Section 414.

After prohibiting states from regulating "the entry of or the rates charged" by wireless providers, section 332(c) goes on to state that it does not "prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S. § 332(c)(3)(A). Contrary to Petitioner's assertion, this "other terms and conditions" clause does not save claims of inadequate service from pre-emption. Plainly, the "other terms and conditions" that the clause refers to are terms and conditions *other than* those that would involve states in entry or rate regulation. Damages awards based on allegations of inadequate service do not fall into that category: such awards directly determine how much of their rates carriers must rebate on account of alleged inadequacies in their service.

The legislative history of section 332(c) and the Commission's prior orders support this common sense interpretation of the "other terms and conditions" clause. The Commission has observed that this clause permits state regulation of carrier practices that are "separate and apart from their rates."[9] Accordingly, states may regulate matters such as customers billing information and billing practices, provided that "such review does not

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[9] *In the Matter of Petition of California P.U.C.*, 10 FCC Rec. at 7550 ¶ 145; *In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate CMRS*, 10 FCC Rec. 7842, 7852 ¶ 43 (May 19, 1995).

directly affect end-user rates."[10] In a similar vein, a House Committee Report observes that the "other terms and conditions" referenced in section 332(c) include "such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; the bundling of services and equipment . . . or other such matters." H.R. Report No. 103-111, 261 (1993). The common characteristic of these examples is that they do not involve rate or entry regulation. To be sure, the report alludes to "consumer protection" matters, but it does so in the context of "billing information" and "billing disputes" – matters far removed from rate regulation. It would be a serious mistake to read this brief reference to consumer protection out of context as an indication that *any* consumer protection claim is permissible under section 332(c). Lawsuits seeking to enjoin "excessive" wireless rates or to fence particular carriers out of local markets based on allegations of past misconduct could be styled as "consumer protection" actions, but such actions are at the core of what section 332(c) seeks to prohibit.

Also unavailing to Petitioner is the Communications Act's generic savings clause, which provides that "Nothing in this chapter contained shall . . abridge or alter the remedies now existing at common law or by statute." 47 U.S.C. § 414. This provision was adopted in 1934 – fifty nine years before the adoption of section 332(c) in 1993. Moreover, whereas section 414 applies broadly across the Communications Act, section 332(c) specifically and expressly pre-empts state action that would regulate "the entry of or the rates charged by [CMRS providers]." As courts have repeatedly observed, section 414 does

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10 *In the Matter of Petition of the State of Ohio*, 10 FCC Rec. at 7852-53 ¶ 43.

not apply in the context of express preemption provisions like section 332(c) because the "Act cannot be read 'to destroy itself.'" *In re Comcast*, 949 F. Supp. at 1205 (holding that section 414 did not save consumer fraud claims from preemption under section 332(c)); *Central Office Telephone*, 118 S. Ct. at 1965 (section 414 did not save contract and tort claims from pre-emption under filed rate doctrine).

IV. The Authority Cited By Petitioner Is Inapplicable and Unpersuasive.

Petitioner cites a number of federal cases allegedly supporting its interpretation of section 332(c), *see* Petition at 22-26, but none of these cases addresses whether section 332(c) actually pre-empts state law damages claims. The vast majority of these cases deal with the separate question of whether section 332(c) *completely* pre-empts the field of CMRS regulation such that any case involving CMRS service is removable from state court to federal court.[11]

For example, Petitioner cites *Bennett* v. *Alltel Communications of Alabama*, 1996 WL 1054301 (M.D. Ala. May 14, 1996), for the proposition that consumer fraud claims based on nondisclosure of the practice of "rounding up" wireless charges are not pre-empted. *Bennet*, however, merely held that section 332(c) did not completely pre-empt the

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[11] Ordinarily, federal preemption is raised as a defense to a plaintiff's state law claims and may not serve as a basis for removing a case to federal court. *See Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 63 (1987). In certain rare instances, however, "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Id.* at 63-64. Where a state court action impinges on one of these "completely pre-empted" fields, a defendant may remove the case to federal court rather than merely asserting a pre-emption defense before the state court. In the absence of complete pre-emption, however, a state court defendant must assert its pre-emption defense in state court unless there is a separate basis for removing the case to federal court.

"whole field" of CMRS regulation so as to allow removal of the case to federal court. *Id.* at *5 & n.4. In so holding, the Court expressly observed that "the causes of action in this case may very well be pre-empted" under section 332(c). *Id.* at *5 n.4. The court added that its decision to remand the case to state court should have no effect on "the state court's consideration of the substantive pre-emption defense." *Id.* at *6. Several other cases cited by Petitioner are to the same effect,[12] and still others pre-date and have nothing to do with section 332(c).[13]

Petitioner also relies heavily on the Washington Supreme Court's decision in *Tenore* v. *AT&T Wireless Services*, 962 P.2d 104, 115 (Wash. 1998), *cert. denied*, 119 S. Ct. 1096 (1999).[14] There, the court held that section 332(c) did not pre-empt consumer fraud

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[12] *See DeCastro* v. *AWACS, Inc.*, 935 F. Supp. 541, 555 (D.N.J. 1996) (holding that case was not removable, but observing that "The defendant is free to argue in state court that the class claims . . . are pre-empted by federal law"); *Sanderson* v. *AWACS, Inc.*, 958 F. Supp. 947, (D. Del. 1997) (concluding that case was not removable to federal court, but that "at the end of the day these [pre-emption] considerations might result in the conclusion that [plaintiff's] state claims are barred by section 332(c)(3)(A) of the Act"); *Weinberg* v. *Sprint* Corp., 165 F.R.D. 431 (D.N.J. 1996) (remanding case to state court because plaintiff's consumer fraud claims not completely pre-empted).

[13] *Nader* v. *Allegheny Airlines, Inc.*, 426 U.S. 290 (1976), decided under the Federal Aviation Act of 1958, did not involve an express pre-emption provision, and did not even involve airline rate setting. *Nader* was merely a case of overlapping remedies in the state courts and the Civil Aeronautics Board for a passenger denied his seat on a scheduled flight. Similarly, *Bruss Co.* v. *Allnet Communication Services*, 606 F. Supp. 401 (N.D. Ill. 1985), did not involve an express pre-emption issue of any kind. There, the trial court merely permitted a plaintiff to assert state law claims against a wireline long distance provider who allegedly charged the plaintiff at rates higher than those set forth in its tariff.

[14] As Petitioner's counsel surely knows, the suggestion that the United States Supreme Court's denial of certiorari in *Tenore* indicates the Court's view that "state law claims of false advertising against the wireless telephone industry are not preempted," Petition at 22, is false. A certiorari denial "carries with it no implication whatever regarding the Court's (continued...)

claims predicated on the carrier's practice of "rounding up" wireless charges. In reaching this result, the court focused on the fact that the complaint did not overtly challenge the carrier's rates, but instead challenged the "non-disclosure" of its rate setting practices. The court concluded that on the facts of that case the plaintiffs' damages claims were not pre-empted because they did not seek "per se rate regulation." *Id.* at 115.

The *Tenore* decision does not correctly apply section 332(c). The relevant question under that provision is not whether a particular claim asks a court to engage in rate regulation "per se," but whether a claim would require a court to engage in rate regulation *in fact*. The damages claims in *Tenore*, though styled as claims for non-disclosure, will nonetheless require the court to review the rates charged by the carrier and to order a rebate of any portion determined to be inappropriate. *Tenore* failed to address this crucial aspect of the plaintiffs' claims, and also failed to consider how its holding would affect the national regulatory policy that section 332(c) was intended to advance.[15]

In any event, the narrow, fact-based holding in *Tenore* does not remotely support the issuance of a sweeping ruling that *any* state law claim styled as one for "consumer protection" or "wrongful conduct" is permissible under the Act. To the contrary, the plain language as well as the statutory purpose of section 332(c) confirms that, at a minimum, state court damages claims predicated on allegations of inadequate or misrepresented wireless service are pre-empted.

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view on the merits of a case." *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Opinion of Frankfurter, J., respecting the denial of certiorari).

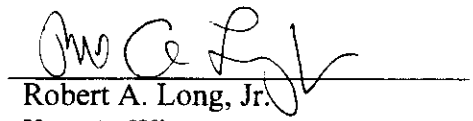
[15] The court in *Tenore* was also unduly swayed by the *Nader* decision, discussed *supra* at n. 13, which did not even involve an express preemption provision.

CONCLUSION

For the foregoing reasons, the declaratory ruling sought by the Petitioner should be denied. The Commission should instead declare that section 332(c) pre-empts money damages claims predicated on allegations of inadequate or misrepresented CMRS service.

Respectfully submitted,

SPRINT SPECTRUM L.P.
d/b/a SPRINT PCS



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